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September 27, 2011

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
455 12th Street SW Washington, DC 20554

RE: Acceleration of Broadband Deployment
WC Docket No. 11-59
City of Wilmington Reply to PCIA Comments filed on July 18, 2011

Dear Ms. Dortch:

On July 18, 2011, PCIA (The Wireless Infrastructure Association) provided comments in response to the Federal Communication Commission's Notice of Inquiry (WC Docket No. 11-59). PCIA's Exhibit A describes a pattern among local jurisdictions of "setting inappropriate and often illegal preferences on the types of wireless facilities that service providers can use" and includes a list, including the City of Wilmington, that have "blanket bans across certain zoning districts" (10). In response to these comments, the City of Wilmington, North Carolina submits this letter to provide information about recent changes to portions of our code concerning communications facilities and to clarify current practices implementing those provisions.

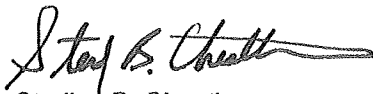
On August 16, 2011, the Wilmington City Council unanimously adopted an ordinance amending the City's Land Development Code concerning permitting of communications facilities (attached). The changes, crafted in conjunction with a local representative of the telecommunications industry, explicitly permit new wireless communications towers and facilities in three additional City zoning districts. With the adoption of the ordinance, new telecommunication facilities may be located in Office and Institutional-1 (O & I-1), Office and Institutional-2 (O & I-2), and Community Business (CB) districts with issuance of a special use permit. According to the code already in place they are also permitted, with prescribed conditions, in the Regional Business (RB), Community Services (CS), Airport Industrial (AI), Light Industrial (LI), and Industrial (IND) districts. Equipment is permitted by collocation in the Central Business District (CBD). The only districts not expressly permitted following the recent text amendment are those that include residential uses.

However, additional changes to the code during the recent update also provided a more suitable foundation to permit communications facilities in the sensitive context of residential districts. The amendment to the code included revisions to the *Regulations for concealed, stealth or camouflaged towers* and the corresponding definition of concealed towers (attached). As a result, in practice concealed telecommunications towers enclosed entirely within existing structures, such as church steeples, bell towers, and cupolas, are permitted by administrative review on an individual basis in all districts, including those with residential uses. In summary, as a result of the recent update of the City's code, communication facilities may now be permitted in all the City's zoning districts either through issuance of a special use permit, by meeting prescribed conditions, or in concealed towers on an individual basis.

The City of Wilmington has been a consistent advocate for the expansion of broadband as an essential part of an economically competitive city's infrastructure and as a tool for education and community development. As a proponent, the City's recently updated code permits communications facilities in commercial and institutional areas and establishes a framework for suitable, concealed towers to be permitted in all zoning districts, including residential ones. The assertions made by PCIA regarding the City of Wilmington's code and practices, apparently based on outdated and incomplete information, are incorrect.

Please contact me if you need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Sterling B. Cheatham", with a long horizontal flourish extending to the right.

Sterling B. Cheatham
City Manager

Cc Council
Charles Archer, NC League of Municipalities

Ordinance



City Council
City of Wilmington
North Carolina

Introduced By: Sterling B. Cheatham, City Manager

Date: 8/16/2011

Ordinance Amending the Wilmington City Code Sections 18-190, 18-191, 18-194, 18-259, 18-812 to Allow Communication Facilities in the O&I-1, O&I-2 and CB Zoning Districts by Prescribed Conditions or Issuance of a Special Use Permit, Amend the Separation Distance Between Facilities, Setbacks of New Towers, Compound Buffers, Permitted Heights for Concealed Towers and to Define "Concealed Communication Tower" (LDC-9-511)

LEGISLATIVE INTENT/PURPOSE:

WHEREAS, NCGS Section 160A-385 authorizes local governments to amend ordinances regulating land use within their jurisdiction; and

WHEREAS, the amendment set out below is made in accordance with NCGS Section 160A-364 and Article 3, Section 18-117 of the Land Development Code; and

WHEREAS, the amendment set out below is intended to promote the public health, safety, and welfare by amending the Land Development Code to allow communication facilities in the O&I-1, O&I-2 and CB zoning districts by prescribed conditions or issuance of a special use permit, define the separation distance between facilities, define "concealed communication tower", setbacks of new structures, and compound buffers.

THEREFORE, BE IT ORDAINED:

SECTION 1: Chapter 18, Article 5, Sec. 18-190(d) (6), O&I-1, Office and Institutional District-1 is hereby amended to delete the phrase "reserved" and to read as follows:

"(6) Communication Facilities"

SECTION 2: Chapter 18, Article 5, Sec. 18-191(d) (6), O&I-2, Office and Institutional District-2 is hereby amended to delete the phrase "reserved" and to read as follows:

"(6) Communication Facilities"

SECTION 3: Chapter 18, Article 5, Sec. 18-194(d) (8) CB, Community Business District is hereby amended to add a new phrase "Communication Facilities" and to read as follows:

CITY CLERK
CERTIFIED TO BE A TRUE COPY
Sandra Spivey

“(8) Communication Facilities”

SECTION 4: Chapter 18, Article 6, Sec. 18-259, Communication Facilities of the Wilmington City Code is hereby amended to read as follows:

New wireless communication towers and facilities including concealed, stealth or camouflaged communication towers shall be allowed in the O&I-1, O&I-2 and CB zoning districts only with issuance of a special use permit. Within the CBD, communication facilities shall be permitted only with collocation of antennas and equipment; no new communication towers shall be permitted in the CBD. Cellular antennas and wireless communication towers and facilities, where permitted (RB, O&I-1, O&I-2, CB, CS, AI, LI and IND Districts), are subject to the following conditions:

(a) *Height limitations:* Towers may not exceed the maximum height permitted in the zoning district by more than twenty (20) feet, except pursuant to a special use permit, except for concealed, stealth or camouflaged towers, which must comply with Sec 18-259 (n). Under no circumstances shall a tower be allowed to be constructed which is over three hundred (300) feet in height.

Airport Industrial (AI) District: In the AI District, communication facilities, including radio and TV stations, cellular telephone facilities, towers, etc., are not allowed above the height limitation established for the district by the Airport Height Zoning Ordinance.

(b) *Site plan:* No tower may be constructed or permitted without a set of plans bearing a licensed professional engineer's seal having first been filed with the city manager.

(c) *Corridor Overlay District:* Towers which are located on lots which are governed by a corridor overlay zone, shall also observe the use limitations imposed by the applicable overlay district. Towers located in overlay districts shall comply with the regulations contained in the underlying zoning district regulations as well as the overlay district regulations. Where there is a conflict, the more stringent regulation shall apply.

(d) *Setbacks:* Any tower shall have a setback equal to one hundred (100) percent of the tower height from any adjacent property line or principal structure and, in addition, all supporting cables and anchors shall be contained within the property or site on which the tower is located. If the tower is a monopole, any setback from principal structures or adjacent property lines shall equal sixty (60) percent of their height; provided that this requirement may be waived by written consent of the affected property owner or occupant of any principal structure (if different from the property owner). The required setback may be reduced if a licensed professional engineer certifies that the tower fall-zone will not exceed the setback area should the tower fail. The form of the waiver shall be subject to review by the city attorney and a notice of waiver shall be filed with the register of deeds prior to the issuance of a building permit.

(e) *Spacing:* No tower may be constructed closer than fifteen hundred (1,500) feet to any

other tower. This distance shall be measured by following a straight line from the centerline of the base of the proposed tower to the centerline of the base of the existing tower; however, if a cellular communication provider can prove that no other space is available on an existing tower or surrounding structure or that an existing tower structure will not technically satisfy the specific needs of the applicant and provides an affidavit or other evidence to this effect, a variance from the board of adjustment can be requested only for a portion of the fifteen hundred-foot spacing requirement contained in this section.

(f) *Buffering requirements:* The base of the tower, any guy wires, and any associated equipment, structures, shelters, cabinets, generators, or platforms shall be surrounded by a fence when all adjacent properties are zoned nonresidential. When an adjacent property is residentially zoned or used or is within view of a right-of-way, a buffer shall be provided on all sides of the base of the tower, any guy wires, and any associated equipment, including structures, shelters, cabinets, generators, or platforms. The buffer shall be installed surrounding the compound with a combination of a solid fence and a ten (10)-foot of landscape area. Plantings shall consist, at a minimum of one (1) tree of the size specified in section 18-448 every fifteen (15) linear feet. If the lot on which the tower is placed contains existing vegetation sufficient to provide opacity to the adjacent parcels, then the buffer may be reduced as determined by the city manager; however, once a tower is constructed, the required landscaping around the base of the tower shall be reviewed by the city manager for each future collocation to ensure replacement of dead or missing vegetation.

(g) *Roof Top Towers:* Such towers if located on the top of buildings or structures shall be no more than thirty (30) percent of the building/structure height above the building/structure or fifty (50) feet above the building/structure, whichever is less. Such towers shall not require a special use permit; however, those subsections of these regulations that govern EMF emissions and reception interference shall be followed.

(h) *Collocation:* Any tower that is between one hundred sixteen (116) feet and one hundred eighty (180) feet in height shall be constructed to permit the *collocation* of one (1) additional user. Any tower which exceeds one hundred eighty (180) feet in height shall be constructed to allow a minimum of two (2) additional uses. To further encourage *collocation*, additional users and associated equipment which do not add to the height of the tower or area of the compound, may be added without additional approval.

The applicant or property owner shall provide documentation from a licensed professional engineer that the tower has sufficient structural integrity to accommodate the required number of additional users as stated above. Additionally, a statement shall be submitted by the tower's owner regarding the intent of the owner to allow shared use of the tower and how many other uses can be accommodated on the tower.

Any applicant for construction of a new tower shall provide evidence to the City demonstrating that the applicant cannot co-locate its proposed facilities on any existing tower.

(i) *Lighting*: When lighting for a tower is required by the Federal Aviation Administration (FAA), it shall consist of a red light at night and strobes in the day. The lighting shall be oriented so as not to project directly onto surrounding residential properties. Prior to the issuance of a building permit, the owner of the tower shall provide documentation from the FAA that the lighting is the minimum lighting required by the FAA.

(j) *Electromagnetic Field (EMF) Emissions*: The tower owner shall provide documentation indicating that the power density levels do not exceed federally approved levels of electromagnetic radiation or American National Standards Institute (ANSI) standards, whichever provides the stricter requirements.

(k) *Reception Interference*: EMF emissions and tower profiles shall not interfere with radio and television reception in the vicinity of the tower.

(l) *Signs*: No sign shall be permitted on the antennas or support structures unless required by the Federal Communication Commission (FCC), the Federal Aviation Administration (FAA), the City of Wilmington, or New Hanover County.

(m) *Removal of Towers*: Towers which are not used for a period of six (6) months or more shall be removed by the owner within ninety (90) days following written notice from the City. Towers which are not maintained for a period of six (6) months or more shall be removed by the owner within ninety (90) days following written notice from the City. To comply with these regulations, the owner of the tower must provide evidence to the City from the FCC that the tower is still in use and any evidence the City Manager may deem necessary to show the tower has been maintained in accordance with all applicable building Code regulations.

To assure the removal of towers which do not meet the requirements for use or maintenance, a performance bond shall be posted for each tower by the tower owner prior to the issuance of a building permit. The amount of the performance bond shall be submitted by the tower owner and reviewed and determined for sufficiency by the City engineer. Removal costs shall be charged to the tower owner and if not paid, then it shall be charged against the performance bond.

(n) *Regulations for concealed, stealth or camouflaged towers*: A concealed, stealth or camouflaged communication tower which is a tower designed to blend in with its surroundings including, but not limited to, antennae located in a structure such as within a church steeple, or a bell tower a unipole with the antennae and attachments hidden within a single pole or attached to a water tower. New construction of a stealth unipole tower shall be permitted up to one hundred fifty (150) feet in height. Construction of a unipole greater than one hundred fifty (150) feet in height requires issuance of a special use permit. If meeting the definition of a concealed, stealth or camouflaged communication tower requires any addition to an existing structure, any modification to any architectural feature of a structure or the construction of a structure to conceal or help camouflage a communication tower, the planning staff shall review the plans for such changes or new construction prior to any permit being issued. If the addition

or modification involves only the installation of antennae without increasing the height or changing the appearance of the existing structure, a special use permit shall not be required. In reviewing such plans, considerations shall include whether the addition, feature or new construction is architecturally harmonious in such aspects as material, height, proportion, bulk, scale and design with the building complex or surroundings of which it is part. If it is a stand-alone structure, the structure and all associated equipment shall be reviewed as to whether the structure is harmonious with the surrounding area. If a plan is denied by the city manager, this decision may be appealed to the board of adjustment.

(o) Towers, antenna, and other associated equipment including cables and wires placed on existing structures in the 1945 Corporate Limits shall be harmonious with the architecture of the building and shall be disguised to the greatest extent possible.

SECTION 5: Chapter 18, Article 15, Sec. 18-812, Definitions of the Wilmington City Code is hereby amended to delete the definition of "Concealed or Camouflaged communication tower" and replace with "Concealed, stealth or camouflaged communication tower " to read as follows:

"Concealed, stealth or camouflaged communication tower: A concealed, stealth or camouflaged communication tower is a tower designed to blend in with its surroundings including, but not limited to, antennae located in a structure such as within a church steeple, bell tower or attached to a water tower; or a unipole or "slick-stick" with the antennas and attachments hidden within a single pole. Monopoles designed to resemble a tree or flag pole will not be considered a stealth communication tower."

SECTION 6. That any person violating the provisions of this ordinance shall be subject to the penalties set forth in Article XIV, Section 18-52 of the Land Development Code.

SECTION 7: That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

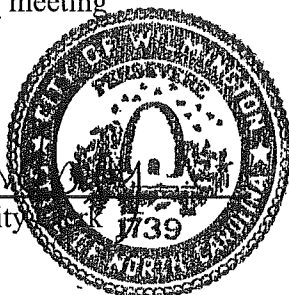
SECTION 8: That if any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 9: That this ordinance shall be effective immediately upon its adoption.

Adopted at a regular meeting
on August 16, 2011.

ATTEST:

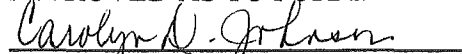

Penelope Spicer-Sidbury, City





Earl Sheridan, Mayor Pro Tem

APPROVED AS TO FORM:


Carolyn D. Johnson
City Attorney

PH2-6